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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,054	12/22/2000	Dov Bulka	40921/206279	1574

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SUITE 200 GENERATION PLAZA
1822 N.C. HIGHWAY 54 EAST
DURHAM, NC 27713

EXAMINER

MAHMOUDI, HASSAN

ART UNIT	PAPER NUMBER
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2175

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/747,054

Applicant(s)

BULKA ET AL.

Examiner

Tony Mahmoudi

Art Unit

2175

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-15

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


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Continuation of 5. does NOT place the application in condition for allowance because:

The applicants' arguments made in the "Response to Final Rejection" filed on 05-February-2004, have been fully considered but they are not found to be persuasive:

In response to the applicants' request that the "finality of the rejection be withdrawn" in view of the applicant's argument that the Final Rejection was not necessitated by the applicants' amendments and that "the amendments previously made merely further clarify or define features of the invention already initially in the claims", the argument has been fully considered but is not found persuasive. For instance, the amended claim 1 presently recites "establishing a file in a directory I-node memory structure" as we all "hash tables having an array of hash buckets", and "if the bucket contains a matching file name". None of the claims (1-15) originally presented in the application (filed on 22-december-2000) recite any of the "establishing a file", "array of hash buckets", and "if the bucket contains a matching file name".

In fact, the Remarks section (page 8 of 14) of the REPLACEMENT RESPONSE AND AMENDMENT TO OFFICE ACTION DATED FEBRUARY 12, 2003, filed by the applicants on 02-September-2003, in paragraph 1, line 2 states: "In light of the foregoing amendments, reconsideration of the rejection under 35 U.S.C. 102(b), (e), and 103(a) is courteously requested". Also, in the same section, paragraphs 2 and 3 state: "Claims 1-15 remain in the application. Claims 1-5, 10, 14, and 15 have been amended." "In order to facilitate the examiner's reconsideration, the following discussion of the invention as reflected in the amended claims is presented hereinafter. Support for the amendments to the claims is found in paragraphs 0022, 0023 and 0024."

From the above paragraphs, it is clear that the applicants voluntarily amended claims 1-5, 10, and 14-15 to overcome the references cited in the first Office Action.

The MPEP, in section 706.07(a), states: "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)."

In view of the remarks and discussions made above, the new grounds of rejection included in the Final Rejection Office Action (mailed on 16-November-2003) was necessitated by applicants' amendments to the claims. The examiner therefore maintains the finality of the rejections as presented in the Final Rejection Office Action, mailed on 16-November-2003 (paper No. 10.)

The applicants' arguments made in the "Response to Final Rejection" filed on 05-February-2004, does not place the application in condition for allowance and the claim limitations of the "finally rejected" claims are still met by the Johnson et al (U.S. Patent No. 5,151,989), Saks et al (U.S. Patent No. 5,666,532) and Ish et al (U.S. Patent No. 5,778,430) references.